Summary of Actions Taken by the County Council
Related to the Annual Growth Policy and Development Impact Taxes

I. Annual Growth Policy

1. The changes to the AGP noted in this section take effect July 1, 2004.

2. The Policy Area Transportation Review (PATR) Transportation Test is eliminated.

    a. If a preliminary plan approved before July 1, 2004 is modified or withdrawn and replaced with a new application at the same location (or part of the same location) for approval or re-approval after July 1, 2004, the Planning Board must retain any transportation improvement required in the previously-approved plan.

    b. Annual report on previous fiscal year's approval activity required. Report is from the Planning Board and is due September 15. Must be accompanied by a "prioritized list of road and intersection improvements based on current and projected congestion patterns and additional anticipated development." Must also address development trends that impact school enrollment.

3. The Local Area Transportation Review (LATR) Transportation Test is tightened.

    a. Intersection congestion standards are tightened by 50 Critical Lane Volume (CLV) in all areas except Metro Station Policy Areas.

    b. Projects that are fully funded in the first 4 years of the State or County capital improvements programs may be counted for capacity (instead of the first 5 years, as is the current practice).

    c. Limited LATR applies to subdivisions generating 30-49 peak-hour vehicle trips. The Planning Board must either require the development to meet LATR requirements or, at the Board's discretion, allow the developer to pay a fee equal to 50% of the applicable impact tax.

    d. The Planning Board has been given explicit authorization to require that larger subdivisions test more distant intersections.

    e. The Planning Board has more latitude to reject proposed LATR improvements if the Board finds that the proposed improvements (such as additional turning lanes) are not desirable, will have a negative impact on pedestrians, etc. The Planning Board has explicit authorization to require trip mitigation instead of a physical improvement, even if the developer prefers to make a physical improvement.

f. At the Planning Board's discretion, trip mitigation programs must be at least 12 years but no more than 15 years in duration.

g. Three more intersections are added to the list of intersections in the Potomac Policy Area that are subject to LATR.

4. The Alternative Review Procedures are modified.

   a. The Metro Station Areas procedure only applies to LATR now. The fee has changed (now based on impact tax). The Planning Board is no longer required to perform Comprehensive LATR in policy areas where the procedure is used.

   b. The Special Ceiling Allocation for Affordable Housing is eliminated.

   c. The Corporate Headquarters procedure was eliminated, except that Lockheed Martin remains eligible to use it for expansion of their headquarters, if needed.

   d. The Strategic Economic Development Projects procedure is retained, but the fee is changed (now based on impact tax).

5. The Development Districts process is unchanged, except that PATR will no longer be a basis for requiring transportation improvements.

6. The School Test is tightened.

   a. The adequacy test (enrollment compared to capacity) is 100% at the high school level and 105% at the middle and elementary school levels. The test continues to look 5 years into the future.

   b. There is no longer any "borrowing" at the elementary or middle school levels. At the high school level, capacity may be borrowed from one adjacent cluster if needed to meet the 100% standard.

   c. If enrollment exceeds the standard, but is below 110%, the developer must make a "school facilities payment" to the County. The payment is $12,500 per student, using the most recent student generation rates. Student generation varies by housing type.

   d. If enrollment exceeds 110% of capacity at the elementary or middle school level, there is a moratorium on all new residential approvals except senior housing. The same is true at the high school level, except that the capacity borrowing provisions (see "b") apply.

   e. There is no definitive way to predict which areas might go into moratorium because of schools. However, in FY 2005 no areas would go into moratorium, or be subject to the school facilities payment, if the projects that add school capacity in the Superintendent's Recommended FY 2005-10 CIP are fully funded.

7. Certain issues are identified for further study.

   a. The Planning Board must submit an AGP amendment to the County Council by February 1 on the topic of limiting "unmitigated" trips in Metro Station Policy Areas.

   b. The Planning Board must review, and make recommendations to the County Council, on the time limits of a finding of adequate public facilities, including extension provisions. The AGP does not say when this review is due, but the Board and Council talked about doing it in 2004.

   c. For the next AGP Policy Element, the Planning Board and relevant agencies must consider potential options for testing the adequacy of public safety facilities.

   d. For the next AGP Policy Element, the Planning Board and relevant agencies must evaluate how Advance Transportation Management System improvements should be counted in LATR capacity calculations.

8. The Council will soon consider amendments the Growth Policy section of the County Code.

   a. The Ceiling Element of the AGP would be eliminated.

   b. The schedule for the biennial Policy Element would be changed. In odd-numbered years starting in 2005, the schedule would be as follows:

Staff Draft due by:	June 15
Planning Board recommendations due by:	August 1
Executive's recommendations due by:	September 15
Board of Education's recommendations due by:	October 1
WSSC's recommendations due by:	October 1
Council action due by:	November 15

II. Development Impact Taxes

1. The impact taxes go into effect for building permits applied for starting March 1, 2004.

2. The transportation impact tax structure is changed and its rates generally are raised.

   a. There are three transportation impact tax areas: Metro Station Policy Areas, Clarksburg, and everywhere else (the 'General District').

   b. The new rates are shown in the attached table. Rates in Metro Station Policy Areas are half those in the General District. Rates in Clarksburg are 50% higher for residential development and 20% higher for commercial development than in the General District.

   c. Affordable housing units are exempt from the tax. Formerly, all units in a development with a significant percentage of affordable units were exempt.

   d. The rate for a productivity housing unit is half the otherwise applicable rate.

   e. The tax does not apply in State-designated Enterprise Zones, of which there are currently two in Montgomery County: the Silver Spring and Wheaton Central Business Districts.

   f. The new transportation impact tax is anticipated to raise about $20 million annually. The revenue will be variable depending upon the residential and commercial construction activity, as well as the amount of impact tax credits drawn down in a given year.

   g. The revenue collected in Clarksburg, Gaithersburg, and Rockville must be spent in the same area from which it is collected. Elsewhere, the revenue collected from a development should be spent on projects that serve the traffic generated by the development, if feasible.

   h. There is a limited grandfather clause that is expected to allow four projects to pay the old rates: Fairfield development project in Germantown Town Center (residential portion), the Hecht's site in Friendship Heights, White Flint Place (non-residential portion), and the Air Rights Building project in Bethesda CBD.

3. The credit provisions have been tightened prospectively.

a. A developer can receive a dollar-for-dollar credit against his impact tax for transportation capacity improvements. Until now, if a developer has spent more for a transportation improvement than the calculated impact tax, not only would there be no impact taxes paid, but the developer could apply the ‘excess’ credit against the impact tax on a future development for which the developer owns at least a 30% interest. New ‘excess’ credits will no longer be applicable, although existing excess credit may still be applied.

b. A developer can receive a credit against the applicable impact tax for capacity improvements to County roads, but not to State roads (unless, in Rockville or Gaithersburg, a Memorandum of Understanding between the City and County allows for a State road credit).

c. Credits issued after March 1, 2004 expire after 6 years from the date of their issuance.

4. A new school impact tax on residential development is enacted.

a. The base rates for single-family housing are $8,000 for a detached unit and $6,000 for an attached unit. For single-family units there is a surcharge of $1 per square foot for each square foot of gross floor area above 4,500 square feet to a maximum of 8,500 square feet (gross floor area calculation includes basement). Therefore, the top rate for a single-family-detached unit is $12,000 and the top rate for a single-family attached unit if $10,000.

b. The rates for multi-family units are $4,000 for a garden apartment (except 1-bedroom garden apartments) and $1,600 for high-rise and 1-bedroom garden apartments.

c. The rate for senior housing units is zero.

d. Affordable housing units are exempt from the tax.

e. The rate for a productivity housing unit is half the otherwise applicable rate.

f. The school impact tax does not apply in State-designated Enterprise Zones, of which there are currently two in Montgomery County: the Silver Spring and Wheaton Central Business Districts.

g. The school impact tax is anticipated to raise about $25 million annually. The revenue will be variable depending upon residential construction activity.

h. There is a limited grandfather clause. This clause is expected to allow four projects to be exempt: Fairfield development project in Germantown Town Center (residential portion), the Hecht's site in Friendship Heights, and the Air Rights Building project in the Bethesda Central Business District.

i. Revenue from the school impact tax must be used only for public school projects that add capacity: new schools, additional permanent classrooms, and the portion of modernizations that add permanent classrooms.